

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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QWEST COMMUNICATIONS CORPORATION,

Appellant,

V

MICHIGAN PUBLIC SERVICE COMMISSION,  
SPRINT COMMUNICATIONS, AT & T  
COMMUNICATIONS,  
TELECOMMUNICATIONS ASSOCIATION OF  
MICHIGAN, ATTORNEY GENERAL  
JENNIFER M. GRANHOLM,

Appellees.

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UNPUBLISHED

August 3, 2001

No. 223129

MPSC

LC No. 011900

Before: Neff, P.J., and O’Connell and R. J. Danhof,\* JJ.

PER CURIAM.

Appellant Qwest Communications Corporation appeals as of right from an order of the Michigan Public Service Commission (PSC) revising procedures designed to prevent unauthorized switching of telecommunications services provided to end users. We affirm.

The expansion of competition in the telecommunications industry has given rise to new services and the entry of new providers. A few providers have engaged in unscrupulous activities. One such activity, commonly called “slamming,” refers to the switching of one or more of an end user’s telecommunications services from one provider to another provider without the permission of the user. 1998 PA 259 and 1998 PA 260, effective October 1, 1998, amended the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.*,<sup>1</sup> and gave the PSC greater authority to deal with unscrupulous providers. The legislation expressly prohibited a telecommunications provider from engaging in slamming, granted the PSC the authority to issue orders enforcing procedures designed to eliminate slamming, and provided the PSC with the power to impose sanctions, including fines and revocation of licenses.

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<sup>1</sup> The MTA was repealed effective January 1, 2001. MCL 484.2604(1).

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

The issuance of an order by the Federal Communications Commission (FCC) adopting rules designed to prevent slamming prompted the PSC to initiate an investigation of its own procedures to determine if changes were needed to bring them into compliance with the FCC's directive. Following receipt of comments from interested parties, the PSC adopted several new procedures. New section 5 established a registration procedure for telecommunications providers, required providers to register before offering services, and authorized the PSC to reject or suspend any registration. New sections 6 and 7 imposed certain responsibilities on carriers that engaged in activities such as acting as a billing agent for other providers. New section 8 required executing carriers, i.e., those carriers that put into effect customers' requests that service be changed, to notify customers of any change in their service providers within ten days of the change taking effect. The PSC stayed the effect of the new provisions pending receipt of further comments.

Subsequently, the PSC adopted revised anti-slamming procedures. The PSC revised section 5(d)(4), which authorized suspension or revocation of a provider's registration, to indicate that it applied to "any violations" of MCL 484.2505, which prohibits slamming, orders issued under MCL 484.2505, or the anti-slamming procedures. The PSC adopted section 6 with amendments, declined to adopt section 7, and adopted section 8 with amendments and renumbered it as section 7.

The PSC granted in part and denied in part several petitions for rehearing. In particular, the PSC amended section 7 to provide that to the extent that any required information was not known to or readily ascertainable by either the executing carrier or the submitting carrier, that information need not be included in the notification provided to the end user.

This Court's review of a PSC order is narrow and well defined. MCL 462.25 provides that all rates, fares, charges, classification and joint rates, regulations, practices, and services prescribed by the PSC are presumed, *prima facie*, to be lawful and reasonable. *Michigan Consolidated Gas Co v Public Service Comm*, 389 Mich 624, 635-636; 209 NW2d 210 (1973). A party aggrieved by an order of the PSC bears the burden of proving by clear and convincing evidence that the order is unlawful or unreasonable. MCL 462.26(8). An order is unlawful if it is based on an erroneous interpretation or application of the law, and is unreasonable if it is not supported by the evidence. *Associated Truck Lines, Inc v Public Service Comm*, 377 Mich 259, 279; 140 NW2d 515 (1966). A reviewing court must give due deference to the administrative expertise of the PSC, and may not substitute its judgment for that of the agency. *Attorney General v Public Service Comm No 2*, 237 Mich App 82, 88; 602 NW2d 225 (1999). However, this does not mean that a court may abandon or delegate its responsibility to interpret statutory language and legislative intent. *Miller Bros v Public Service Comm*, 180 Mich App 227, 232; 446 NW2d 640 (1989). Statutory interpretation is a question of law subject to *de novo* review. As a general rule, this Court will defer to the construction of a statute by the government agency charged with interpreting it, unless the agency interpretation is clearly erroneous. *In re MCI Telecommunications Complaint*, 229 Mich App 664, 681-682; 583 NW2d 458 (1998), modified 460 Mich 396; 596 NW2d 164 (1999).

Initially, appellant argues that the PSC's order is unlawful because it is based on an erroneous interpretation of the MTA. Section 505 of the MTA, MCL 484.2505, prohibits

slamming. Section 506(2)(d) of the MTA, MCL 484.2506(2)(d), authorizes the PSC to revoke a provider's license if the PSC finds a "pattern of violations of section 505."<sup>2</sup> Section 5(d)(4) of the PSC's anti-slamming procedures authorizes the PSC to suspend or revoke a provider's license if the provider is found responsible for "any violations" of MCL 484.2505, PSC orders, or PSC procedures. Appellant contends that the plain meaning of the word "any" is "one or more." Section 5(d)(4) directly conflicts with MCL 484.2506(2)(d). Appellant asserts that the PSC's erroneous interpretation of its statutory revocation authority does not give effect to the intent of the Legislature, as required, *Shallal v Catholic Social Services*, 455 Mich 604, 611; 566 NW2d 571 (1997), and is unlawful. *Associated Truck Lines, supra*.

We disagree. The PSC is a creature of the Legislature, and has only that power conferred on it by statute. *Union Carbide Corp v Public Service Comm*, 431 Mich 135, 151; 428 NW2d 322 (1988). Section 5(d)(4) authorizes suspension or revocation of a provider's license if, after a contested case hearing, the provider is found responsible for "any violations" of MCL 484.2505. The term "violations" is clearly plural. In no reported case has the PSC sought to revoke a provider's license based on a single alleged violation of MCL 484.2505. The PSC's regulation is presumed to be lawful and reasonable, MCL 462.45, and the PSC's interpretation of MCL 484.2506(2)(d), as reflected in section 5(d)(4), is entitled to deference. *In re MCI Telecommunications Complaint, supra*. Appellant has not shown by clear and convincing evidence that the PSC's order is unlawful. MCL 462.26(8).

Next, appellant argues that the PSC's order is unlawful because the registration procedure contained in section 5 of the PSC's anti-slamming procedures is in effect a licensing requirement. The PSC has no statutory authority to create a licensing procedure for all providers. Appellant asserts that section 5 conflicts with section 401 of the MTA, MCL 484.2401(1), which provides that the PSC has no authority over various telecommunications services. Appellant further asserts that section 5 is inconsistent with the legislative intent to deregulate the telecommunications industry, *In re Procedure and Format for Filing Tariffs Under the Michigan Telecommunications Act*, 210 Mich App 533, 553; 534 NW2d 194 (1995), and is unlawful. *Associated Truck Lines, supra*.

We disagree. The registration requirement established by the PSC in section 5 of its anti-slamming procedures does not parallel a licensing procedure, as that term is commonly understood. The PSC has only that power conferred on it by the Legislature. *Union Carbide Corp, supra*. However, in MCL 484.2505(2), the Legislature granted the PSC the authority to take steps to "ensure" that slamming does not occur. The PSC determined that a registration process would aid it in the identification and tracking of providers, and would better enable it to act on end users' complaints. MCL 484.2401(1) provides that the PSC has no authority over the enumerated telecommunications services "[e]xcept as otherwise provided by law." The registration requirement for providers is a type of regulation permitted by MCL 484.2401(1). The PSC's interpretation of MCL 484.2502(2) as permitting a registration requirement such as that created in section 5(d)(4) is entitled to deference. *In re MCI Telecommunications*

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<sup>2</sup> 2000 PA 295, effective July 17, 2000, added a provision to MCL 484.2506(2), and realigned the remaining provisions. MCL 484.2506(2)(d) is now MCL 484.2506(2)(e).

*Complaint, supra.* The registration requirement is designed to combat slamming, which is illegal. It does not conflict with the Legislature's intent to promote legal competition in the telecommunications industry. Appellant has not shown by clear and convincing evidence that the PSC's order is unlawful. MCL 462.26(8).

Finally, appellant argues that the PSC's order is unlawful and unreasonable in that it creates a requirement, which is not authorized by MCL 484.2505(2), that providers notify customers and provide them with specific information when their service is changed. Moreover, appellant claims that the notification requirement, contained in section 7 of the PSC's anti-slamming procedures, is unreasonable in that it requires carriers to provide customers with information which is not always in their possession.

We disagree. The PSC's decision to implement a notification requirement to combat slamming is consistent with the authority granted to it by MCL 484.2505(2), and is entitled to deference. *In re MCI Telecommunications Complaint, supra.* Furthermore, appellant's arguments regarding reasonableness are moot in light of the PSC's order on rehearing stating that providers are not required to supply end users with information that is neither in their possession nor readily ascertainable. Appellant has not shown by clear and convincing evidence that the PSC's order is unlawful or unreasonable. MCL 462.26(8); *Associated Truck Lines, supra.*

Affirmed.

/s/ Janet T. Neff  
/s/ Peter D. O'Connell  
/s/ Robert J. Danhof